



Judicial Conference of Australia

EXECUTIVE COMMITTEE

MINUTES OF MEETING: 2013/4

Held by teleconference on **Thursday 19th September 2013**
commencing at 5.00 pm Eastern Standard Time

Participating

Justice Philip McMurdo (President) in the Chair
Chief Justice Alan Blow, OAM (Vice President)
Justice David Beach
Justice Robert Beech-Jones
Chief Magistrate Elizabeth Bolton
Magistrate Don Jones
Justice Hilary Penfold, PSM
Justice Steven Rares
Justice Michael Walton
Judge Brian Withers (Treasurer)

Apologies

Judge Michael Baumann, AM
Judge Allan Fenbury
Chief Magistrate Graeme Henson
Justice Judith Kelly
Magistrate Marc Sargent

In attendance

Christopher Roper, AM (Secretary)

1 Minutes of the previous meeting

The minutes of the previous meeting held on 18th April 2013 had been circulated.

Resolved:

That the minutes of the meeting held on 18th April 2013 be approved.

2 President's report and business

Superannuation surcharge

The President reported that there were no specific developments but he noted that there was a change of government. He said that he intended to do two things –

- 1 He would write to the new Treasurer and Attorney General in regard to the surcharge which still affects some judges of the Federal Court and Family

Court and some Territory judges, asking that this anomalous situation be reconsidered.

- 2 He would write a follow up letter to the one he sent to the Treasurer in May 2013 in regard to whether some Territory judges might be caught by the provisions in regard to retirement benefits in excess of \$300,000. In this regard, he reported that the legislation had been passed in a form that excluded some judges but not specifically Territory judges.

Magistrate Jones pointed out that there were also some magistrates affected by the surcharge. The President asked that Magistrate Jones send to him details of the law to which he was referring, so that he could follow up that matter also.

Judicial advice to holders of vice regal office

The President noted that the work of the Working Group may well be affected by the proposed research project by an academic lawyer, to be considered later in the meeting. He reported that two of the Working Group's members, Justice White and retired Judge Williams, although now retired from the Governing Council, had indicated their willingness to continue to serve on the Working Group.

Membership by justices of the High Court

The President reported that he had not yet approached those justices who were not at present members, but would do so.

Committee to develop a policy on the judicial appointment process

The President reported that he had asked Justices Rares, Kelly and Sheahan and Judge Chivell to serve on this committee, and all had agreed except Judge Chivell whom he was yet to hear from. The President said that the new federal Attorney General had already said that he planned to revise the existing process for federal appointments.

Guidelines for the use of social media by judicial officers and courts

The President reported that he had asked Justice Rares to chair a committee to develop these guidelines, and that he would ask members of the Governing Council to consider participating.

3 Financial matters

A financial report for the period 1st July to 31st August 2013 had been circulated, and was noted. The Treasurer reported that the current balances at bank were in total about \$656,000, and that there was nothing else to report.

Resolved:

That the Treasurer's report be received.

Justice Rares pointed out that there was about \$250,000 in the cheque and at-call accounts. He argued that the JCA should seek to maximise its funds by investing the money in interest bearing facilities more proactively. He said that, given the need to have some funds available if needed, most of the monies could be invested in term deposits of various lengths, thus providing the needed flexibility.

The Treasurer pointed out that there were more funds in the cheque account at present because of Colloquium registrations, and that there would be some significant expenditure in regard to the Colloquium.

It was agreed that the Treasurer and Secretary should investigate what term deposits are available, and transfer funds to term deposits after leaving a sufficient amount in the cheque account for all immediate needs.

4 Membership matters

A report for the period to 8th September 2013 had been circulated and was noted. The Secretary reported that the updated report, which had been circulated on the previous day, showed that membership by serving judicial officers represented 49% of the total number of serving judicial officers.

Justice Walton reported that there would be a meeting of heads of industrial courts next year, and that he proposed to raise membership of the JCA at that meeting. He also said that, as a matter for later consideration, they might as a cluster be represented on the Governing Council.

Justice Rares enquired as to whether registrars might be qualified for membership of the JCA, noting that they perform some quasi judicial functions. He said that they are not 'looked after' by any other body, both in a representative capacity or educationally. He asked if the question of what the JCA could do to look after registrars could be put on the agenda for future consideration. The President suggested that this matter be discussed at a Governing Council meeting. Judge Withers said that the matter had been discussed in the JCA about four years ago and *it was agreed* that the Secretary would retrieve what was discussed at that time and circulate it before the next Governing Council meeting.

5 International Association of Judges

The President introduced this matter and noted that there had already been an exchange of emails in regard to it. He also referred to the analysis circulated with the agenda papers. He said that the matters raised in the email discussion by Justice Penfold were important issues.

There was then extensive discussion of the matter.

After this discussion *it was agreed* that the President would talk with Justice Pagone indicating that the JCA was open to membership of the IAJ but would want to know more before committing itself, even if there were a seamless process to admission. Judge Withers cautioned that the process whereby the JCA became a member should not be the basis for criticism at a later time.

6 Secretariat matters

A memorandum had been circulated, and was noted.

Upgrade of JCA's website

The memorandum set out details of three proposals for an upgrade. A copy of a proposal for the website upgrade from Fly Digital had also been circulated.

Resolved:

That the Secretary be authorised to enter into a contract with Fly Digital for \$5,940, including GST, to upgrade the JCA's website by installing a new content management system and redesigning the website, and also be authorised to spend up to an additional \$500 for additional training, if required.

Membership for three years

There was some discussion of the suggestion that an option of three years membership might be offered to all members. The possible administrative difficulties and a possible loss of membership revenue were briefly discussed, as well as the prospect of retaining members by this means.

It was agreed that the new practice in regard to retired judicial officers would be kept under review and, based on what was observed, the Secretary could bring back a proposal for the option of three year membership to a later Governing Council meeting.

Australasian Institute of Judicial Administration

The circulated memorandum set out a proposal that the JCA consider joining the AIJA. After some discussion, it was agreed that it would be better to differentiate between the two organisations and that the JCA not become a member of the AIJA. However, the Secretary was requested to ask the AIJA if the JCA could have access to its published materials, on the basis that the JCA would pay a reasonable charge for them, and that the AIJA could have access to the JCA's published materials.

7 Colloquium

Chief Justice Blow reported that there were 65 registrations and that the final version of the program had gone to the printer.

He reported that AM Meetings Plus had, after investigation, recommended that the 2014 Colloquium be held at the Sheraton Noosa Resort.

Resolved:

That the 2014 Colloquium be held at the Sheraton Noosa Resort.

A draft policy in regard to what is provided for speakers at colloquia had been circulated. It was noted that the policy could be simplified so that it simply provided that members who were current judicial officers would pay for themselves, and members who were retired judicial officers and all non-members would have their costs paid by the JCA.

Resolved:

That the policy, in its simplified form, in regard to what is provided to speakers at the JCA's colloquia be adopted.

8 Contract with AM Meetings Plus Pty Ltd

A proposed contract had been circulated. It proposed a three year contract, from 2014 to 2016 inclusive, at a fee of \$12,000 + GST for the first two years and of \$12,600 + GST for the third year.

Resolved:

That a contract for a further three years be entered into with AM Meetings Plus Pty Ltd on the terms proposed in the circulated contract.

9 Research project on the independence of the judiciary

A memorandum had been circulated and was noted. After some discussion the following was resolved.

Resolved:

1. That the research brief for the project be as follows:

To review and analyse the judgments of Australian courts concerning the independence of the judiciary from the Executive arm of government in relation to the governance of the Commonwealth and the States and Territories. The analysis is to be of the individual judgments and any discernible trend/s. The work is to include a conclusion as to the practical implications which arise for judicial officers.

2. That all Australian law schools be invited to express interest in the project and put forward proposals, and that the President be authorised to decide which proposal should be accepted.
3. That the completed work be uploaded to the JCA's website and published as a small booklet.
4. That the researcher be permitted, with the approval of the JCA at that time, to publish based on the work undertaken and subject to appropriate acknowledgement, but not be permitted to publish the report itself.
5. That a fee of \$15,000 + GST be offered for the work, subject to the report being satisfactory to the JCA, and that the President be authorised to increase this amount to a maximum of \$20,000 should it be found that no appropriate researcher can be found for the lesser figure.

10 Next meeting

It was noted that the next meeting would be held on Thursday 28th November 2013 at 5.00pm Eastern Summer Time.